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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Section 22)	MM Docket No. 92-261
of the Cable Television Consumer)	
Protection and Competition)	
Act of 1992)	
)	
Equal Employment Opportunities)	

COMMENTS OF
TELE-COMMUNICATIONS, INC.

COLE, RAYWID & BRAVERMAN
Suite 200
1919 Pennsylvania Ave., NW
Washington, DC 20006
202/659-9750

Attorneys for
Tele-Communications, Inc.

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C O N T E N T S

Page

Summary of Contents

- I. The Commission's Revised EEO Rules Must Take Into Account the Commission's Annual Reporting Cycle and Permit Adequate Time for Operators to Comply with the New Reporting Requirements..... 1
- II. TCI Urges the Commission to Seek an Interagency Understanding Regarding Federal EEO Reporting..... 4
- III. The Newly Required and Existing Job Categories Require Clarification..... 6
- IV. The Commission Should Clarify that Despite Separate Full-Time and Part-Time Reporting Requirements, Its Processing Guidelines Will be Applied to the Employment Unit as a Whole..... 8
- V. The Commission's Revised Form 395-A Should Permit Operators to Submit Computer Records for Job Title Data and Should Specify a List of Enumerated Requirements for Upper-Level Hiring, Promotion and Recruitment Reporting.....11

Appendix A

SUMMARY OF CONTENTS

The Commission should require implementation of its new and revised reporting requirements to commence with the 1995 reporting period. This schedule accommodates the Commission's established reporting cycle. For TCI, this would require that necessary data retention begin in January 1994.

The Commission should pursue with other federal agencies requiring EEO reporting an interagency understanding with respect to annual filing dates and reporting requirements. This will eliminate burdensome overlapping reporting as well as coordinate reporting cycles among the several federal agencies which require the filing of EEO information.

Finally, the Commission should clarify the new and existing job category descriptions it proposes to adopt, its application of the Processing Guidelines where full-time and part-time employees are now reported separately and that recruiting data relating to the six newly created job categories may be provided on a pre-approved Commission list.

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COMMENTS OF
TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI") by its attorneys,
hereby submits these comments on the FCC's Notice of Proposed
Rule Making concerning the revision of its EEO rules.

I. THE COMMISSION'S REVISED EEO RULES MUST
TAKE INTO ACCOUNT THE COMMISSION'S ANNUAL
REPORTING CYCLE AND PERMIT ADEQUATE TIME
FOR OPERATORS TO COMPLY WITH THE NEW
REPORTING REQUIREMENTS

Section 22 of the Cable Television Consumer Protection
and Competition Act of 1992 (the "Act") requires the Commission
to amend its EEO rules by July 2, 1993 to require operators to
provide additional and extensive employment information. Con-
gress has specifically directed that the Commission obtain infor-
mation in six newly designated upper-level job categories, on
full-time and part-time employment, on the number of employees in
all job titles in all job categories of the employment unit and
on hiring, promotion and recruitment practices in the newly added

categories. Indeed, for TCI, a company which provides reports on some 400 employment units and employs individuals in at least 250 job titles, the revised Form 395-A as proposed by the Commission annually will generate at least an additional 4,000 pages of employment data.

More important than the volume is the time period the Commission will set for implementing its new requirements. While its revised rules are required to be adopted by July, the Commission's annual reporting year follows an established cycle. The Commission's annual employment report instructs operators to designate one payroll period in January, February or March for data to be entered on an employment profile form which provides a "snapshot" of the unit's workforce.^{1/} But the Commission's review of an employment unit takes into account not only the limited time period specified on the annual report but also the employment activities and practices which have occurred throughout the reporting year associated with the report. For example, if the Commission issues a Letter of Inquiry relating to a particular reporting year, it will seek detailed information on the method in which each job position was filled during the 12-month reporting period. Similarly, a Supplemental Investigation Sheet ("SIS") designated for a particular unit for filing simultaneously with the Form 395-A will focus on the unit's

^{1/} See "Instructions for Completing FCC Form 395-A" at 1.

annual efforts to recruit, hire and promote women and minorities, to seek out female and minority vendors, and to conduct an ongoing evaluation of its employment profile. On-site audits conducted by Commission staff focus on documentation of employment practices, management initiatives and vendor recruiting collected over an annual period. Accordingly, because of the volume of reports which must be generated by large MSOs, many operators, including TCI, select a payroll period early in January for reporting purposes and close their annual reporting year with the end of this payroll period. Thus, for TCI, whose payroll period ends the first of January, the 1993 reporting year has closed and the 12-month 1994 reporting year has begun. When the Commission adopts rules in July 1993, TCI's 1994 reporting year will be six months underway.^{2/}

This issue is significant, both because of the volume of reporting and the uncertainty as to the specific form and content of the information required by the rules the Commission adopts in July. For example, the tracking of the additional job categories and job title information cannot be implemented by cable operators until the rulemaking is completed. As discussed at Section III herein, the Commission's new rules must clarify

^{2/} Even for units which end their annual reporting period in May with the filing of the Form 395-A, the 1994 reporting year will have begun by the time the Commission issues its new rules.

its proposed broad definition of who counts as a "Corporate Officer" and how "double" titles, i.e., "Vice President and Chief Financial Officer" or "Vice President and General Manager" are treated for reporting purposes. It is likely that other modifications will be made as a result of this rulemaking to the existing job categories which will also impact record keeping.

For these reasons, TCI requests that the Commission permit operators to implement the newly mandated reporting requirements beginning with the 1995 reporting period. (This would then require data collection to begin in January, 1994.) This transition period is necessary to permit operators, particularly large MSOs, to develop and direct appropriate reporting training and data retention and implement the new requirements.

**II. TCI URGES THE COMMISSION TO SEEK AN
INTERAGENCY UNDERSTANDING REGARDING
FEDERAL EEO REPORTING**

At the same time operators work to integrate the FCC's EEO reporting requirements, they must continue to comply with other federal EEO obligations which operate on completely separate cycles. For example, in 1992, the U.S. Equal Employment Opportunity Commission ("EEOC") revised its reporting cycle to require operators subject to employment reporting to provide employment data based on a payroll period designated in July, August or September for filing in November. This reporting cycle formerly coincided with the FCC's annual reporting cycle. This

separation of reporting cycles has proven unduly burdensome for operators who have previously been able to comply with both agencies' cycles simultaneously. As discussed later in this Section, the Commission should move other federal agencies charged with EEO data reporting to coordinate these reporting cycles with the FCC's established cycle.

Additionally, TCI is currently required to gather and report numerous categories of employment data under Title VII of the Civil Rights Act of 1964, as amended, and Executive Order 11246.^{3/} These regulations are additionally implemented by the EEOC with enforcement responsibility vested in the Office of Federal Contract Compliance Programs ("OFCCP") of the Department of Labor. The annual Title VII reports are due on or before September 30 of each year and require statistical information for nine job categories. Executive Order 11246 requires development of affirmative action plans for certain government contractors. These plans call for, among other things, gathering of statistical employment information and conducting comprehensive employee utilization analyses. These activities must be completed at least annually.

Section 22 of the Cable Act appears simply to expand the reporting requirements for the first four of the Title VII

^{3/} See 29 C.F.R. § 1602; 41 C.F.R. § 60.2.

job categories contained in the EEOC regulations. A comparison of the FCC, EEOC and OFCCP regulations leads TCI to conclude that each of the agencies is charged with attaining the same goal, i.e., ensuring equal employment opportunity for all qualified persons. And although each of the agencies' regulations may be somewhat different, the FCC's existing and proposed reporting requirements should be sufficiently broad to encompass those of the EEOC and OFCCP. TCI asserts that the FCC, as the agency Congress charged with comprehensive oversight of the cable industry, is in the best position to collect and analyze employment data from those business entities which fall within its jurisdictional scope. Moreover, given the FCC's familiarity with the cable industry and the industry's unique characteristics, the FCC is in the best position to gauge the EEO compliance activities of the various cable companies. Accordingly, TCI urges the FCC to seek a comprehensive interagency understanding with both the EEOC and OFCCP concerning the nature and scope of the employment information sought by Section 22 and the other applicable EEO regulations and set an annual submission date for that information which coincides with the Commission's reporting cycle.

III. THE NEWLY REQUIRED AND EXISTING JOB CATEGORIES REQUIRE CLARIFICATION

The Act requires operators to implement additional job category reporting in six new upper-level categories which include: (1) Corporate Officers, (2) General Manager, (3) Chief

Technician, (4) Comptroller, (5) General Sales Manager and (6) Production Manager. These categories supplement the nine categories currently used by the Commission in its annual Form 395-A. The Commission has invited comment on its definitions of all fifteen categories. In this regard, we suggest the following:

Corporate Officers. This category begs instruction. Corporate officers are often designated by their specific area of authority which results in a "dual" title, e.g., Vice President and Controller. Metropolitan cable systems are often managed by a President or Vice President and General Manager. In its new rules the Commission must clarify whether these individuals should be classified only once, as "Comptroller" and "General Manager" respectively, with the "Corporate Officer" category reserved for those individuals not otherwise classified.

Chief Technician. This job title is outdated in cable industry and is no longer used by TCI. The title has been replaced by a more professional one -- "Technical Operations Manager". Other industry titles may include "Plant Manager", "Technical Services Manager" or "Chief Engineer". This title change is not superficial. Such an individual is assigned fiscal responsibilities,

inventory and fleet management and is responsible for strategic planning to meet the company's business objectives. A "Chief Technician" connotes an individual of lesser responsibility. Accordingly, the Commission's new rules should redesignate the category or specify that the category includes the newer titles which are now standard in the industry.

Office/Clerical. The category fails to list by example the backbone of the industry, the Customer Service Representative ("CSR"). This title should therefore be inserted as a referenced example.

Managers/Professionals. Both categories list by example "program directors". We submit that this title be correctly placed in "Professionals".

**IV. THE COMMISSION SHOULD CLARIFY THAT
DESPITE SEPARATE FULL-TIME AND PART-TIME
REPORTING REQUIREMENTS, ITS PROCESSING
GUIDELINES WILL BE APPLIED TO THE
EMPLOYMENT UNIT AS A WHOLE**

Section 22 of the Act directs that the Commission require operators to report full-time and part-time employees separately. In the NPRM, the Commission does not discuss how its Processing Guidelines will be applied to this separate reporting requirement. For the following reasons, we urge the Commission to clarify in its Report and Order, that the Processing

Guidelines it uses will continue to be used to evaluate the employment unit as a whole.

The separate reporting of full-time and part-time employees raises a significant issue relating to the employment of women and minorities in the Upper Four categories, specifically relating to part-time telemarketing positions. These positions, although counted in the Upper Four categories, are characterized by limited upward mobility and high turnover. Viewed separately from full-time sales, these characteristics will be particularly pronounced. Yet for the operator and telemarketing employee alike, these characteristics prove to be favorable.

Telemarketing departments typically operate on a part-time basis. This is because the effective hours for solicitation are strategically limited to key evening and weekend hours. Most often, if an operator chooses to expand its telemarketing efforts, this simply means more people will be hired to telephone potential customers at the same hours. The unique characteristic of telemarketing employees is that they are frequently females or minorities. For many women, telemarketing offers some supplemental income and a comparatively flexible work schedule at a time when evening or weekend child care can be arranged. Unemployed individuals see telemarketing as a particularly attractive opportunity because it requires no prior experience and affords ongoing, immediate job openings. Telemarketing

is additionally characterized by relatively high turnover rates. This is due to the fact that many persons accepting these positions often do so for a limited financial purpose which is achieved in a short timeframe. Individuals accepting telemarketing positions typically are not seeking full-time or "career" positions in this department.

The Commission must consider this phenomenon in its review of a unit's part-time employment penalties and its compliance with EEO obligations. Part-time positions, particularly in telemarketing, serve an important, yet limited function for the cable system. If the Commission's Processing Guidelines are applied separately to part-time and full-time workers, the part-time analysis will be out of balance with the overall employment picture of the system. It will likely show high percentages of female and minority hires and also an inordinately high proportion of turnover among women and minorities in sales where little promotion potential exists.

Therefore, in prescribing its rules, the Commission must clarify that the Processing Guidelines will apply to the employment unit as a whole. In this way, the unique characteristics of part-time telemarketers and other part-time employees will be proportionately balanced within the total employment profile of the individual employment unit.

**V. THE COMMISSION'S REVISED FORM 395-A
SHOULD PERMIT OPERATORS TO SUBMIT
COMPUTER RECORDS FOR JOB TITLE DATA
AND SHOULD SPECIFY A LIST OF ENUMERATED
REQUIREMENTS FOR UPPER-LEVEL HIRING,
PROMOTION AND RECRUITMENT REPORTING**

The Commission's proposed revised Form 395-A significantly increases the volume of the employment data reporting form for each individual employment unit by at least 100%.^{4/} Job title reporting alone is substantial in a company like TCI that employs over 250 different job titles which cover some 20,000 employees. For this reason, the Commission should permit operators to present job title data as compiled for internal record keeping purposes. This information already is tracked for payroll and a variety of other purposes. This then permits operators who already maintain the required information to utilize existing documentation without the double work of conforming to a new Commission form. To ensure satisfactory submissions, the Commission could pre-approve existing formats for operators who choose to submit in-house reports of job title information.

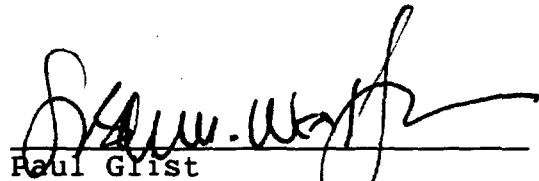
The Commission could further clarify and structure its proposed form by requiring the hiring, recruitment and promotion data at Section VII.B. to include only the enumerated elements it seeks in a list, not a narrative. The pre-approved list, which would include recruitment sources for each position, referrals

^{4/} Depending upon the number of job titles utilized in an employment unit the amount could be substantially greater.

from each source, gender and minority status of each referral, the number of applicants for each position, those interviewed, gender and minority status of each interviewee and referral sources of each successful candidate, would ensure that the operator has provided all the required information sought by the Commission.

Respectfully submitted,
TELE-COMMUNICATIONS, INC.

By


Paul Grist
Susan Whelan Westfall
COLE, RAYWID & BRAVERMAN
Suite 200
1919 Pennsylvania Ave., NW
Washington, DC 20006
202/659-9750

Its Attorneys

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APPENDIX A

Subpart E - Equal Employment Opportunity Requirements

Section 76.77 is proposed to be amended by adding paragraph (d) to read as follows:

- (d) Job Category Definitions. The following job category definitions are to be used when classifying employees for purposes of this section:

- (1) Corporate Officers. Employee with official authorization to represent the company in a fiduciary capacity and who is not otherwise classified and accounted for within the five succeeding categories.

* * * * *

- (3) Chief Technician. Employee who supervises all technical personnel in the installation, service, maintenance and construction departments, and/or studio. Employee may also oversee technical budgets and expenditures, inventory control and fleet management. Category includes related titles which include "Technical Operations Manager", "Technical Manager", "Plant Manager" or "Chief Engineer".

* * * * *

- (11) Office and Clerical. Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: customer service representatives, bookkeepers, cashiers, collectors of bills and accounts, messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators and kindred workers.

* * * * *